IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CONFIRMATION CASE No 1 of 2000

with

CRIMINAL APPEALS No 446, 430 & 449 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SATISH HIMMATLAL RUPARELIYA

Appearance:

1. Criminal Confirmation Case No. 1 of 2000
MR KT DAVE, APP, for Petitioner No. 1
MR PM THAKKAR, Sr. Counsel, for Respondent No. 1
MR BUDHBHATTI for respondent No.2

2. Criminal Appeal No. 446 of 2000
MR PM THAKKAR, Sr. Counsel for the appellant.
MR KT DAVE, APP, for the Respondent.

3. Criminal Appeal No.430 of 2000

MR BUDHBHATTI for the appellant.
MR KT DAVE, APP, for the respondent.

4. Criminal Appeal No.449 of 2000

MR ADIL MEHTA for the appellant.
MR KT DAVE, APP, for the respondent.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 02/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This Confirmation Case and the Criminal Appeals arise out of a judgment and order rendered by the learned Additional City Sessions Judge, Ahmedabad, in Sessions Case No.56 of 1995, on April 18, 2000, convicting the accused Nos. 1 and 2 for offences punishable under Sections 302 read with Sections 120-B and 398 of Indian Penal Code and Section 135 of the Bombay Police Act and, sentencing accused Nos. 1 and 2 with capital punishment. Accused No.3 was convicted for offence punishable with Section 201 of I.P.C. and was sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.2000/- and, in event of default in payment of fine, to undergo rigorous imprisonment for a further period of six months.

2. A First information Report came to be lodged with Shahibaug Police Station on October 22, 1994, at about 18.00 hours by one Jagdishbhai Govindbhai Brahmbhatt, who happened to be the Manager of Neelam Hotel, situate near Baliya Limbdi, on Civil Hospital Road, Ahmedabad.

2.1 As per the F.I.R., on that day, while the first informant was on his duty as Manager of Neelam Hotel, two 'passengers' (guests) arrived at about 14.25 hours and asked for a room. Room No.208 was allotted to them. One of the passengers made an entry in the register at serial No.3817 in the name of Satish N. Ruparelia of Ghanshyamnagar, Division-I, Varachha Road, Surat. He signed the register in English and the room was, thereafter, given to him. At about 4.00 P.M., the hotel boy-Dipsinh informed the first informant that one well-built person had gone to Room No.208, which was occupied by the two 'passengers' (guests). At about

16.30 hours, the man, who had made the entry in the Hotel Register came to the first informant and requested for another room with an attached bathroom as Room No.208 did not have an attached bathroom. The first informant informed him that he shall arrange for another room with an attached bathroom and he may wait for some time.

2.2 At about 17.15 hours, Savitaben, Sweeper working in the Hotel, came and informed the first informant that she had been to the second floor and noticed some drops of blood and blood stained foot steps in front of Room No.208. He, therefore, immediately rushed to the room and himself saw the drops of blood and the blood stained foot steps. The door of the room was locked from outside. However, on an attempt made from outside, the window of the room opened up. Seeing through the window, he saw that the flooring in the room was fully blood stained and a dead body was lying under a cot. He, therefore, immediately informed the Shahibaug Police.

2.3 After the police was informed, police arrived and broke open the door and it was noticed that trunk of a dead body was lying in the room without the head. According to the first informant, the trunk was that of the person who had arrived subsequently, as informed by the Hotel Boy-Dipsinh, whereas the first informant was not aware as to when did the two 'passengers' (guests), who had arrived earlier, leave the hotel. The first informant then gave description of Satish Ruparelia as well as the other person, describing colour of skin, height, age group, colour of hair, hair style, etc. He also stated that he would be able to identify both the 'passengers', if they are shown to him.

3. On basis of this F.I.R., an offence was registered and investigation was made.

4. During the investigation, it was found that the two passengers, who had come to the Hotel, were Satish Himatlal Ruparelia and Raju alias Rajendra N. Panchal, who are appellants in Criminal Appeal No.446 and 430 of 2000, respectively. It was also found that they had, on that day, approached one Arvindbhai Shah, resident of Alok Apartment, Narayani Road, Near Shantivan, Paldi, Ahmedabad, at his shop. Accused No.1 had informed Arvindbhai Shah that some China Silk cloth was available and if he is interested, he may go with them and may carry approximately Rs.10000/ with him for the purpose of purchase. It has also emerged during investigation that Satish H. Ruparelia was engaged in garment business and Arvindbhai was also dealing in textile and garments. It

transpired that Arvindbhai went along with these two persons on the same scooter which was borrowed by Satish Himatlal Ruparelia from one of his friends-Jignesh. Thereafter, they reached the said Neelam Hotel and the incident occurred. After the incident was over, Satish Himatlal and Raju alias Rajendra Panchal fled away from the hotel. It is the case of the prosecution that, while they were in the hotel room, Arvindbhai Shah was done to death by Satish Himatlal and Raju alias Rajendra Panchal. His head was severed and taken away from the room. The trunk, which was found from the hotel, was that of Arvindbhai Shah. As per the prosecution case, after fleeing from the hotel, accused Satish Himatlal and Raju alias Rajendra Panchal went to the house of Satish Himatlal. Wife of Satish Himatlal noticed that both of them had sustained some injuries. She was informed that they had met with an accident. They had a maroon coloured bag with them and, after some time, they went away. After leaving the house of Satish Himatlal, both the persons went to a doctor and took treatment. Thereafter, Satish Himatlal went to Radhika Guest House, Ahmedabad and occupied a room under an assumed name. From there, he went to Surat on 24.10.1994 and stayed at Rupali Guest House under a different assumed name. At Surat also, he took treatment from two different doctors and, thereafter, he returned to Ahmedabad and stayed in Kapadia Guest House under another assumed name. In the meanwhile, because of the information given by the first informant, there were news items about a murder having been committed in the Neelam Hotel involving Satish Himatlal Ruparelia. Son of the deceased-Arvindbhai, therefore, immediately approached the police. He was taken to the morgue where he identified the trunk of the dead body which was found from the hotel as the trunk of his father-Arvindbhai on the basis of the clothes, the rings and the surgical scar. Raju alias Rajendra Panchal was arrested on the 23rd October, 1994 and was interrogated. On basis of information received from him, further investigation was made and the severed head of Arvindbhai was discovered along with the weapons used in commission of crime. Subsequently, Satish Himatlal Ruparelia also came to be arrested.

5. It was revealed during the investigation that ornaments worn by the deceased were robbed by Satish Himatlal and Raju alias Rajendra Panchal and were given to Himatlal Babulal Ruparelia, father of Satish Himatlal, who, in turn, got the ornaments melted into ingots.

6. The police, having found sufficient evidence against these persons, filed charge sheet in the Court.

The case was committed to the City Sessions Court and registered as Sessions Case No.56 of 1995. The Trial Court framed charge against the accused persons at Ex.9 for offences punishable under Sections 120-B, 364 read with 120-B, 302 read with 120-B, 394 read with 120-B and 201 of Indian Penal Code and Section 135 of the Bombay Police Act. All the three accused persons pleaded not guilty to the charge and claimed to be tried. The trial was, therefore, proceeded with. The Trial Court examined as many as 44 witnesses. Considering the evidence led by the prosecution, the Trial Court came to a conclusion that, although there is no direct evidence to implicate the accused persons, there is a strong chain of circumstances leading to the guilt of the accused and connecting the accused with the crime. The learned Trial Judge, therefore, convicted all the three accused persons for the offences with which they were charged and sentenced them, as stated above.

7. Since accused Nos. 1 and 2, namely, Satish Himatlal Ruparelia and Raju alias Rajendra Panchal, have been sentenced with capital punishment, case has been referred to this Court by the Trial Court for confirmation of the sentence. Simultaneously, the three convicts have preferred the appeals against their conviction. Accused No.1 has preferred Criminal Appeal No.446 of 2000, accused No.2 has preferred Criminal Appeal No.430 of 2000 and accused No.3 has preferred Criminal Appeal No.449 of 2000.

8. We have heard learned Senior Counsel Mr. Thakkar for original accused No.1-Satish H. Ruparelia (appellant in Criminal Appeal No.446 of 2000), learned advocate Mr. Budhbhatti for original accused No.2-Raju alias Rajendra Panchal (appellant in Criminal Appeal No.430 of 2000) and learned advocate Mr. Adil Mehta for original accused No.3-Himatlal Ruparelia (appellant in Criminal Appeal No.449 of 2000). We have also heard learned Additional Public Prosecutor, Mr. K.T. Dave, for the State. The record and proceedings of the Trial Court is before us. Since all these three appeals and the Confirmation Case arise out of the same judgment and order, all the three appeals and the Confirmation Case are heard together and are disposed of by this common judgment. For sake of convenience, appellant in Criminal Appeal No.446 of 2000 is addressed to as 'accused No.1', appellant in Criminal Appeal No.430 of 2000 is addressed to as 'accused No.2' and appellant in Criminal Appeal No.449 of 2000 is addressed to as 'accused No.3'.

9. We have been taken through the entire evidence

threadbare. We have, ourselves, given a close scrutiny to the evidence.

10. Learned Senior Counsel, Mr. Thakkar, has raised contentions in support of the appeal of accused No.1 against conviction and tried to assail the conviction on certain grounds. However, it was apparent that the conviction was not questioned seriously and the main thrust of the contentions and arguments advanced by the learned Senior Counsel was on quantum of punishment. He submitted that the incident is of 1994; the charge was framed on January 16, 1996; the trial began on July 10, 1998 and the judgment in question was rendered on April 18, 2000. He submitted that when this matter is heard, it is 31st July, 2001 and almost seven years have lapsed since the date of incident. He, therefore, submitted that the Court below was not justified in inflicting the severe most punishment, namely, capital punishment. He submitted that there is total absence of any direct evidence to connect the accused with the offence. The genesis of the incident is not brought on record. The accused themselves had injuries on their person which have not been explained by the prosecution and the evidence would indicate that there was no preplanning on part of the accused persons, even if it is accepted that the prosecution has proved the charges against the accused. Mr. Thakkar submitted that the nature of weapons which are alleged to have been used in commission of crime, the manner in which the accused has disclosed his correct identity while booking room, the fact that nothing unusual was noticed by the Hotel Boy when he went to serve tea in the room a few minutes before the incident and the fact that accused No.1 himself went to the counter with a request for change of room exposing himself to the possibility of being identified by the Manager at a later point of time would all lead to indicate that there was no preplanning on part of the accused. It is, therefore, not a case of premeditated murder, which may be considered as a mitigating circumstance. Mr. Thakkar submitted that none of the accused persons have any criminal antecedents. He, therefore, submitted that there is nothing either to show that, if not inflicted with capital punishment, they would be a menace to the society. Mr. Thakkar submitted that the capital punishment can be inflicted only in rarest of rare cases where it is found that the murder is committed in a gruesome manner with preplanning and the victim was helpless or innocent or defenceless. Mr. Thakkar submitted that, in the instant case, there is no such evidence. There is nothing to indicate that there is no scope for reformation of the accused persons and

that the society at large would be at risk, if the accused persons are not hanged to death. He, therefore, urged that the appeal may be allowed and the sentence of death punishment may not be confirmed.

11. Learned advocate Mr. Budhbhatti has also raised the same contentions. According to him, accused No.2 comes from a strata of society engaged in manual and physical work. He is involved in this episode as he happens to be friend of accused No.1 when they stayed in the same street years back. Learned advocate Mr. Budhbhatti also tried to indicate that there are number of infirmities in the case of the prosecution which have not been considered by the Trial Court. He submitted that accused No.2 himself had injuries on his person. These injuries have not been explained by the prosecution. Mr. Budhbhatti submitted that accused No.2 had injuries on palmar aspect of both the sides which would indicate that they were defence wounds.

11.1 Regarding test identification parade, Mr. Budhbhatti submitted that test identification parade was not properly conducted. There was opportunity for the witnesses to have seen the accused before he was brought for the parade. The other persons made to stand in the row did not carry the similar stature as that of accused No.2. Accused No.2 wears very high powered lenses for which he is known as "Battery" and there is nothing to indicate that other participants who had participated in the parade were also made to wear such high powered spectacles. Mr. Budhbhatti submitted that accused No.2 had an injury on the head, which was bandaged which would naturally distinguish him from other persons standing and, therefore, no emphasis could have been laid on the evidence of test identification parade. Mr. Budhbhatti submitted that considering the fact that age of accused No.2, at the time of the occurrence, was 20 years; considering that he has already spent seven years in jail; considering that no incriminating article was found from him; and considering total lack of motive, he deserves acquittal. However, if the Court is not inclined to accept this contention, alternatively, he submitted that these circumstances may be considered as mitigating circumstances and the punishment of hanging may not be confirmed and be reduced to life imprisonment.

12. Mr. Adil Mehta, learned advocate for accused No.3, has contended that there is no active participation of accused No.3 in the commission of the crime even as per the prosecution case. He submitted that there is no evidence to indicate that accused No.3 had knowledge

about the fact that the golden ornaments which were converted into ingots were of the principal offence committed allegedly by accused Nos.1 and 2. Considering the fact that accused No.3 is father of accused No.1, he could not have been convicted for such an offence as, a father, in ordinary course, would try to help the son in getting the ornaments converted into ingots. He, therefore, urged that accused No.3 may be accquitted by allowing his appeal.

13. Mr. K.T. Dave, learned Additional Public Prosecutor, has opposed these appeals on the ground that the chain of circumstances indicated by the prosecution is strong enough to convict the accused persons. He submitted that, although there is no direct evidence, the circumstantial evidence is cogent and coming from independent sources. He submitted that the evidence conclusively implicate the accused persons. According to Mr. Dave, the crime is committed in a brutal manner. An innocent man is done to death by inflicting as many as 33 stab wounds and, as if this was not enough, his head has been chopped off mercilessly. Such a ghastly murder for a petty amount of Rs.10,000/-, according to Mr. Dave, calls for a severe punishment which has rightly been inflicted upon by the Trial Court. He, therefore, urged that the sentence of death to accused Nos.1 and 2 may be confirmed and the punishment inflicted upon accused No.3 may also be confirmed. As regards accused accused No.3, Mr. Dave submitted that accused No.3 is the father of accused No.1 and he can be presumed to have knowledge about the ornaments being not that of accused No.1 and, therefore, when he took these ornaments to market and got them converted them into ingots, his innocence cannot be accepted. Mr. Dave submitted that the Trial Court has, in detail, dealt with each of the circumstances proved by the prosecution by examining 44 witnesses. The chain is properly established and the appeals deserve to be dismissed. As regards quantum, Mr. Dave submitted that the manner in which the crime is committed indicates that it was a cold blooded and gruesome murder committed by accused Nos. 1 and 2 in a preplanned manner and, therefore, the case can be considered as one of the rarest of rare cases and death punishment inflicted by the Trial Court may be confirmed and appeals may be dismissed.

14. We have been taken through the evidence by the learned advocates for the appellants as well as the learned Additional Public Prosecutor. We have given a close scrutiny and thoughtful consideration to the evidence on record in light of the contentions raised

before us. The present case is sought to be established by circumstantial evidence. Various circumstances are pointed out to indicate the involvement of the accused persons in the crime. There is no dispute about the death of Arvindbhai nor is there any dispute about the death being of a homicidal nature. In this regard, it would not be out of place to consider the evidence of Dr. Dipakbhai Mistry, P.W.33 (Ex.160), who had performed postmortem of the trunk as well as the head of the deceased. He has recorded as many as 33 stab wounds, 1 CLW, 7 incised wounds along with multiple incised wounds on hand of the deceased. The postmortem notes at Ex.161 also indicate that the neck of the deceased was cut and the head was totally severed. The neck was cut from 2 cm. above the supra sternal natch on the back at C7 and T1 level. There were multiple cuts of irregular nature. The structures were not cut at the same level. All these injuries were ante-mortem in nature. The internal injuries indicated that 4 stabs in liver in relation with external injury No.5 had passed through the peritonium and liver. There was internal injury in chest corresponding to the external injuries which had cut the sub cutaneous muscle pleura and entered the left lung in the lung track and there was 100 ml. blood in the left plueral cavity.

14.1 According to the medical evidence, the death occurred due to shock and haemorrhage, and due to injuries present on the body. It was also opined that the injuries were sufficient in ordinary course of nature to cause death and that the injuries were caused by sharp cutting instruments.

15. Postmortem of the head also indicated three incised wounds.

15.1 The doctor expressed a specific opinion after comparing the head and trunk and free end of the neck that the head part and the trunk part were of the same person and were about the same age group. It was opined that neck part attached to the head and neck part attached to the trunk and the nature and site of injury present on both the parts were in anatomical apposition. This would conclude that the dead body which was found in the hotel and the head which was subsequently discovered were of the same person. The head and the trunk have been identified by witness-Sanjay Arvindbhai Shah, son of the deceased, who has been examined at Ex.73 as P.W.6. He had identified the trunk with the help of clothes, ornaments and a surgical scar on the person of the deceased. He also identified the head of the deceased.

16. These pieces of evidence, therefore, leave no scope for any doubt that deceased-Arvindbhai Shah was murdered.

17. Now, the question that requires consideration is whether there is evidence to indicate that deceased Arvindbhai was done to death by accused Nos.1 and 2 in the manner alleged by the prosecution. For this purpose, there is no direct evidence and, therefore, the circumstances shown by the prosecution are required to be considered.

17.1 Witness-Sanjay Arvindbhai Shah, P.W.6 (Ex.73) has stated that, on the day of incident, accused Nos. 1 and 2 came to their shop on a scooter and took away his father-Arvindhai with them under a pretext of making available certain quantity of china silk cloth. His father was asked to take with him an amount of Rs.10,000/- and, accordingly, his father took with him Rs.9500/-. Thereafter, his father was not heard of. Next morning, on reading newspapers, Sanjay approached the police and on being shown the trunk part of the dead body which was found from Neelam Hotel, he identified the same as that of his father. During the night, he had made inquiry at the house of accused No.1 and was told that he had gone out. He made inquiries with Jigneshbhai Patel, P.W. 39, as the scooter on which the accused persons had come to call his father and the scooter on which his father was taken belonged to Jignesh (however, technically, the vehicle was registered in the name of Maheshbhai, father of Jignesh).

17.2 On the other hand, the F.I.R. came to be lodged with the police by Jagdishbhai Govindbhai, P.W.10 (Ex.82), the Manager of Neelam Hotel. His evidence indicates that two persons had come to his hotel on the day of incident at about 2.25 P.M. and booked a room. They were allotted room No.208. At a later point of time, they both came again and occupied the room. Still later, around 4.15 P.M., those two persons were found to be in company of another person by one Rameshbhai Vaghela, working as a Waiter in the hotel, who has been examined at Ex.67. At about 5.15 P.M., a lady Sweeper-Savita noticed drops of blood and blood stained foot marks ouside Room No.208 and she, therefore, reported the fact to the Manager, who after verifying, called the police. It was found that in Room No.208, the floor was spattered with blood and the dead body of the deceased was lying on the floor with the head chopped off. The head was nowhere to be found.

Witnesses-Jagdishbhai Govindbhai and Ramesh Vaghelal have later on identified both the accused persons as the persons who had booked the room and occupied the room initially and the deceased as the person who later on joined them and was found in the room at 4.15 P.M. PM. by witness-Rameshbhai.

17.3 The prosecution has then examined Dr.Minesh C. Shah (Ex.76), who gave treatment to both accused No.1 and accused No.2, on the date of incident at night. He was given a history of injury having been sustained in an accident. He also has identified accused Nos. 1 and 2 as the persons who had taken the treatment on the day of incident. Suporting documents have also been brought on record.

17.4 The prosecution has then examined Dr. Jitendra Atodaria (Ex,.131) and Dr. Deepak Gilitwala (Ex.132), who had dressed the injuries of accused No.1 at Surat. They also have identified accused No.1. Later, the prosecution has examined Dr. Vinod Gupta (Ex.55), Dr. Belaben Patel (Ex.270), who examined accused No.2 and accused No.1, respectively. Before these witnesses, a history indicating involvement of these accused persons in the incident is indicated.

17.5 Witness-Devjibhai Mopjibhai (Ex.112) is the Manager of Radhika Guest House of Ahmedabad. According to him, accused No.1 had stayed in the Guest House under name of Ramesh K. Patel of 10, Vimal Society, Makarpura Road, Baroda. According to this witness, that Ramesh K. Patel was accused No.1, who came to the Guest House at 11.15 A.M. on the 23rd October, 1994 and left the Guest House on the 24th October, 1994 at 11.15 A.M. In this regard entry No.1149 was made in the register of the Guest House.

17.6 The prosecution has then examined witness-Pankajbhai Chhotubhai Shah of Rupali Guest House, Surat (Ex.199), who identified accused No.1 as the passenger who had stayed in his Guest House under an assumed name of Jitubhai Vajubhai Thakkar on the 24th October, 1994 and had made entry No.32 in the register. He also states that the accused left the Guest House on the 31st October, 1994 and during that time, he had occasion to see the man often. He identified accused No.1 as the person who had occupied room under the name of Jitubhai Vajubhai Thakkar.

17.7 The prosecution has then examined Shankerbhai, Manager of Kapadia Guest House, at Ex.134. He states

that a guest came to the Guest House on the 31st October, 1994 and obtained accommodation in the name of Jitendrakumar Vajubhai Thakkar. The entry in the register was made at Sr. No.8227. This witness was not able to identify the person, who had obtained accommodation.

17.8 The prosecution has then examined Dr. Kaushik Vyas, a qualified handwriting expert, who has examined the handwritings in the entries of the register of the hotel and the guest houses, chance handwriting of accused No.1 and admitted handwritings of accused No.1 and has given a specific opinion that the entries made in the registers under the name of Ramesh K. Patel, Satish Himatlal and Jitubhai Vajubhai Thakkar are of the same person, i.e. accused No.1.

17.9 Then there is evidence to Hiraben Bachubhai (Ex.54), who says that accused No.3 gave ornaments to her for converting into ingots. There is evidence of Madhusudan Soni (Ex.66), who says that P.W.1-Hiraben Bachubhai gave ornaments to him for melting and converting into ingots.

17.10 Ritaben, wife of accused No.1 has been examined at Ex.87. She says that on the day of incident, both the accused persons came back together to the house of accused No.1, waited for about half an hour at home and then went out saying that they are going for medical treatment. She says that both of them had sustained injuries and they told her that the injuries were sustained by them in an accident. She said that they had a maroon coloured bag with them. They had closed themselves into a room for some time and then went out.

18. After the arrest, accused No.1 has discovered a maroon coloured bag as well as a razor. Accused No.2, after the arrest, has discovered the head of the deceased and a mango cutter. These discoveries are made in presence of Panch witnesses who have been examined by the prosecution.

19. Finger print expert, Mr. Bajansinh C. Balani, has been examined by the prosecution at Ex.77, who categorically stated that the chance foot prints found at the place of incident were that of accused-Satish H. Ruparelia.

20. The blood group of the blood stains found on shirt of accused No.2, the blood group of the blood stains found on the mango cutter and the blood group of

blood stain on the right shoe of accused was human blood of AB Group. The said group was also that of the deceased.

21. Another circumstance that was sought to be established by the prosecution was that accused No.1 absconded till the 1st November, 1994, the day on which he was arrested. During this period, he stayed at Radhika Guest House, Ahmedabad, under an assumed name, at Rupali Guest House, Surat, again under an assumed name, and at Kapadia Guest House in Ahmedabad, again under an assumed name. These facts have been proved through the witnesses and the opinion of the handwriting expert. It may also be noted that a Citizen wrist watch, a silver ring and a razor along with a maroon coloured bag were discovered by accused No.1 from Kapadia Guest House in presence of Panch witnesses.

22. However, it may be noted that some witnesses have not supported the prosecution case fully, namely, Jignesh, on whose scooter the deceased was taken. He has turned totally hostile and his hostility has been established through other evidence to indicate that, for the reasons best known to him, he has tried to help the defence. Likewise, two other witnesses, who had sharpened the razor and the mango cutter have also not fully supported the prosecution case. One of them has been declared hostile and the other could not identify the persons who got the mango cutter sharpened beause of weak vision due to cataract and lapse of time. However, in our opinion, the prosecution has successfully established an unbroken and strong chain of circumstances to link accused Nos. 1 and 2 with the offence. The circumstances have been narrated by the learned Trial Judge in the judgment impugned herein at pararaph 71, which can be stated thus:-

"71. CIRCUMSTANCES SOUGHT TO BE ESTABLISHED.

Keeping in mind the aforediscussed legal position, let us recapitulate the evidence on record to see as to what are the circumstances which the prosecution seeks to establish and as to whether each one of them is duly established by prosecution by leading cogent, legal, reliable and unimpeachable evidence. Broadly speaking, the prosecution has relied upon the following circumstances.

1. Victim Arvindbhai, his son Sanjay and accused

Nos.1 & 2 were dealing in cloth business and knew each other prior to the date of the incident.

2. The accused No.1 and 2 on 22.10.94 at about 1.00 Hrs. borrowed scooter of their friend Jignesh, at about 2.15 P.M. booked room No.208 in Neelam Hotel by making entry in register and at about 3.00 P.M. went to the shop of Arvindbhai at Kalupur where his son Sanjay was also present.

3. The accused Nos.1 and 2 induced Arvindbhai to come with them, by showing sample of "D" China Silk cloth and telling him that more such cloth in different colours was available and he should keep Rs.10,000/- with him.

4. Thereafter at about 3.15 P.M. the said Arvindbhai and both the accused left the shop on scooter and at that time Sanjay was there in the shop, and when they left, the said Arvindhai had taken Rs.9500/- with him and had gold and silver rings with imbibed stones and gold chain on his person.

5. The accused took the said Arvindbhai to Room No.208 in Neelam Hotel.

6 At about 4.15 P.M., the waiter Ramesh Vaghela saw the two accused and the third person (who was subsequently found murdered) in Room No.208 when he had gone for room service.

7. The accused asked the Manager Jagdishbhai at about 4.30 P.M. to allot room with attached bathroom.

8. At about 5.15 P.M. Manager Jagdishbhai came to know through sweeper Savitaben that there were bloodstains outside the said room and the room was locked from outside.

9. The Manager Jagdishbhai informed the police at about 5.20 P.M. The senior P.I. Mr. Chavda from Shahibaug Police Station came to the hotel at about 5.30 P.M. and they saw that the room was spattered with blood and one dead body without head was lying under the cot.

10. The Manager Jagdishbhai gave complaint before the P.I. Mr. Chavda at about 6.00 P.M. giving description of the two occupants of Romom No.208.

11. The trunk part of the dead body lying in Room No.208 had number of injuries on the body and cut marks on the Jabbha and trousers worn by the deceased, and two rings in the fingers and one amulet on which AJS was embossed and other articles were found from the pocket of Jabbha of the deceased.

12. Both the accused went to the house of accused No.1 with maroon coloured bag at about 6.15 P.M. and gave false explanation about their injuries to the wife of accused No.1, Ritaben. They left the house with the bag at about 6.30 P.M.

13. Dr. Minesh C. Shah gave treatment to both the accused at about 10.30 P.M. in his hospital, discharged accused No.1, and admitted accused No.2 as an indoor patient.

14. On 23.10.1994, Dr. Minesh Shah having found suspicion informed the police and the accused No.2 was caught by the police of Shahibaug Police Station from his hospital at Usmanpura.

15. On 23.10.1994, the head, mango cutter and other incriminating articles were seized from the places shown by the accused No.2 in presence of two Panch witnesses and witness Sanjay, who had identified the head to be of his father.

16. The witness Sanjay had also approached the Shahibag Police Station to make inquiry of his father in the morning hours of 23.10.1994 and he was sent to Civil Hospital where he identified the dead body without head to be of his father from the clothes, rings and amulet worn by his father and the operation mark of his body.

17. The accused No.2 was sent to Civil Hospital for treatment at about 11.50 P.M. on 23.10.1994 where he gave history of his injuries to Dr. Vinod Gupta.

18. The accused No.1 remained absconded from the date of incident till 1.11.1994 during which period he stayed in Radhika Guest House upto 24.10.1994, and then went to Surat where he stayed in Rupali Guest House upto 31.10.1994 and came back to Ahmedabad, where he stayed in Kapadia Guest House on 31.10.1994 and was arrested on 1.11.1994.

19. On 1.11.1994 the incriminating articles like maroon coloured bag containing case paper of Dr. Minesh Shah, wrist watch of Citizen Co., one razor, one silver ring, bunch of keys were seized from Kapadia Guest House, shown by the accused No.1 in presence of Panch witnesses.

20. Thereafter one gold ingot and red stone produced by the accused No.3 at the instance of accused No.1 in their house at Nirman Society, Chandlodia were seized by I.O. on 1.11.1994.

21. On 2.11.1994 at about 12.00 noon the accused No.1 was sent to Civil Hospital for treatment of injuries where he gave history of injuries to Dr. Belaben Patel.

22. One 2.11.1994 the scooter bearing registration No.GBA-8287 was seized from the place shown by the accused No.1 in presence of Panch witnesses.

23. On 7.11.1994, the gold ingot and yellow stone produced by the Goldsmith Jashwantbhai Soni at the instance of accused No.1 were seized in presence of Panch witnesses.

24. Both the accused were identified by Dr. Minesh Shah in test identification parade here on 14.12.1994 and by Manager Jagdishbhai and waiter Ramesh Vaghela in test identification parade held on 1.11.1994 in presence of Executive Magistrates.

25. The Handwriting expert Mr. K.P. Vyas gave opinion that the person who wrote the standard writings and signatures also wrote the encircled disputed writings and signatures.

26. The Finger Print expert Mr. Balani gave the opinion that chance print mark-D resembled the left foot print of accused Satish Ruparelia.

27. The blood group of blood stains on the shirt of accused No.2 contained in parcel No.21, of the blood stain on mango cutter parcel No.27, and of blood stain on the right shoe of accused No.1, parcel No.32 (sample No.37) was "AB" which blood was also of the deceased."

23. Learned Trial Judge has considered all these aspects in a proper perspective and has come to a conclusiosn that the prosecution could establish the chain. In our opinion also, the evidence led by the prosecution establishes a complete chain of circumstances connceting accused Nos. 1 and 2 with the offence of murder of deceased-Arvindbhai. There is no scope even to raise a doubt about the involvement of accused Nos. 1 and 2 in the offence. It stands firmly established that both accused Nos. 1 and 2 are involved in the offence which is of a most brutal and dastardly nature that can ever be perceived.

24. It would be appropriate to note, at this stage, that while the evidence was being read over to this Court, even the learned advocates for the appellants were not in a position to authentically indicate as to how the Trial Court has committed an error in convicting accused No.1 and 2. We are disturbed about the manner in which the offence is committed. As many as 33 stab wounds were inflicted with multiple incised wounds. The head of the deceased was chopped off. Therefore, the main attempt on the part of the learned advocates for the appellants was to indicate and to convince that this is not a fit case where a death sentence may be confirmed and to show that penalty of life imprisonment would be the appropriate penalty, as this case may not be considered as a rarest of rare case. In support of this contention, it was stated that, there was no preplanning for the murder. Otherwise, accused No.1 would not have registered the room in his own name. He would not have requested for another room a few minutes prior to the incident, which would expose him to the witnesses to such an extent that he could be easily identified. It was also contended that till 4.15 P.M. when witness Ramesh Vaghela visited the room for serving tea, everything was normal. Even at 4.30 P.M., when accused No.1 went to request for change of room, there was nothing to indicate that his behaviour was abnormal and, therefore, the incident must have cropped up suddenly. There is absolutely no evidence to indicate as to how the incident has occurred. It was contended that none of the accused persons has any criminal antecedents. It has also been indicated that accused No.2 was only 20 years of age at the time of incident. It has also been contended that there were injuries on person of both the accused persons which would indicate that there was some scuffle before the deceased met with his misfortune.

25. We have given a thoughtful consideratiosn to the circumstances indicated as mitigating circumstances.

Despite all the efforts to convince ourselves, we are not able to succeed in accepting these contentions that the incident occurred on a spur of the moment or without premeditiation. The circumstances in which the incident occurred indicate that it could not be an incident that had occurred in spur of the moment. There is evidence to indicate that accused No.1 and 2 lured the deceased to go to the hotel room under the pretext of purchasing cloth. They lured him to carry money with him. For the purpose of trade transaction for cloth, one was not required to take the deceased to a hotel room. Both accused Nos.1 and 2 as well as the deceased belonged to Ahmedabad and there was no need for them to book a room in a hotel. However, there is no evidence to indicate as to what led to the murder of the deceased. Admittedly, the accused persons have no criminal antecedents. Admittedly, accused Nos. 1 and 2 have both sustained injuries on their person, one of which was required even to be sutured. However, there is absence of evidence on genesis of the incident. There is no material to indicate as to what led to murder of the deceased and how the incident of murder of the deceased cropped up.

26. It has now to be considered whether death penalty imposed on accused Nos.1 and 2 can be confirmed.

26.1 In this regard, decision of the Apex Court in the case of Sheikh Abdul Hamid v. State of M.P., AIR 1998 SC 948, may be profitably looked into. In that case, the husband murdered his wife and children and buried them in a room to which none else had an access. The Apex Court, considering the fact that there was no evidence to show as to how the incident occurred or to show that it was a cold blooded murder, deemed it not a fit case for death sentence.

26.2 Likewise, in Mukund alias Kundu Mishra & Another v. State of M.P., 1997 SCC (Cri) 799, wherein the accused persons committed ghastly murders of a house wife and her two children and, thereafter, looted them of their ornaments and other valuable articles as well as cash, Their Lordships observed that it would not be a rarest of rare case as exemplified in Bachan Singh v. State of Punjab,(1980) 2 SCA 684 and Machhi Singh v. State of Punjab, (1983) 3 SCC 470. In that case, it was observed that, as there was absence of any eye-witness to prove the complicity of the appellants in commission of the offence alleged against them, the case of the prosecution rested only on circumstantial evidence and in those set of circumstances, while confirming the conviction, their Lordships held as above.

26.3 In Ronny v. State of Maharashtra, AIR 1998 SC 1251, considering the fact that, in that case, which of the three accused played which part, it was held that it would not be possible to say that whose case would fall within the category of rarest of rare case and, therefore, to serve the ends of justice, Their Lordships commuted the capital punishment into life imprisonment.

27. If the present case is examined in light of the above settled legal position, the evidence indicates that the incident occurred in Room No.208 of Hotel Neelam, wherein accused Nos.1 and 2 have participated. But there is no evidence to show as to what role was played by whom. It is, therefore, not possible to conclude as to between accused No.1 and accused No.2, whose case would fall within the category of rarest of rare case, although the offence is committed in a most gruesome manner. There is no evidence to indicate genesis of incident either. Considering that penalty of death is irrevocable as against life imprisonment, in the above discussed fact situation and legal position, we do not deem it proper to create an irretrievable situation. In our opinion, this case cannot be considered as a rarest of rare case wherein death penalty is the only penalty that accused Nos.1 and 2 deserve and are required to be imposed with it. We, therefore, do not confirm the capital punishment imposed by the Trial Court on accused Nos. 1 and 2.

28. So far as accused No.3 is concerned, there is no evidence to indicate that he acted with knowledge about the crime committed by accused Nos.1 and 2. All that he has done is, he has taken gold ornaments for being converted into gold ingots and, in absence of any evidence to show that he had acted with knowledge, he could not have been convicted. It would not be out of place to note that, in evidence of Ritaben, there is no reference to presence of accused No.3 at the time when accused Nos. 1 and 2 came to the house of accused No.1 soon after the occurrence in an injured condition with a maroon coloured bag. There is no evidence whatsoever to indicate any meeting between accused Nos.1 and 2 and accused No.3 thereafter. As such, there is no evidence or circumstance to connect accused No.3 with the incident or to impute knowledge to him about the incident. Under the circumstances, we accept the contentions raised by Mr. Mehta, learned advocate for accused No.3 and set aside the conviction of accused No.3, acquitting him of the charges levelled against him.

29. Before parting, a few words on the manner in

which the trial has proceeded. We would like to state that none connected with judicial system can remain oblivious to the delay caused in conclusion of cases. The delay and resultant agony and dissatisfaction in litigants assumes greater degree when it is in a criminal case where the accused persons are under incarceration.

29.1 We find that, in the instant case, the trial has taken a long time to be concluded. With pain we have to note that, to a large extent, the defence is responsible for the delay. Even the learned advocates appearing for the accused persons had to concede that much of the delay could have been avoided by the defence without any detriment to the interest of the accused. To give a concrete example, in evidence of witness-Jignesh, the Trial Court had passed an order taking the muddamal in custody as there was nothing to indicate as to how witness-Jignesh came in possession of that muddamal during the course of the trial. This order, in no manner, affected the interest of any of the accused. However, an application was moved to stay the operation of the order, which came to be rejected by a speaking order. Not contented with this, another application was given by the defence to grant time to enable the defence to challenge the order before higher forum and obtain appropriate orders. We are still at loss to appreciate as to how the defence was adversely affected which would have prompted it to move such applications. We even fail to appreciate what was the locus of the defence to move such an application when the order was made on basis of deposition of Jignesh and the order, in no manner, affected the interest of the defence. There are several other instances which indicate that the matter was delayed for no reason. While reading the evidence, learned advocates for the appellants, in fairness, conceded that several irrelevant and avoidable questions were put resulting in prolonged testimony of witness. Such prolonged depositions, derogatory questions and treatment are, in our opinion, factors which prevent citizens from helping the justice delivery system. In our view, such practice needs to be deprecated. We may do nothing better than to quote what Privi Council in the case of Rajkumar Sen Chowdhary and Ors. v. Ram Sundar Shaha & Ors., AIR 1932 PC 69, observed:-

> "Protracted examinations of witnesses with questions which are quite irrelevant to the suit, and only tend to swell the size of the record, must be deprecated. It is an abuse, which enormously increases the cost of litigation without any corresponding benefit to the parties,

and it is clearly within the powers of the High Court to direct inquiry with a view to disciplinary action in flagrant cases which come under their notice at the hearing of appeals."

30. We may state that it is the duty of everyone concerned to see that the trial of a case proceeds smoothly and speedily. It is obligatory under the provisions of law to conduct the trial day-to-day. The said provsion has been given emphasis by a judicial pronouncement in the case of S.J. Choudhary v. State (Delhi Administration), AIR 1984 SC 618, wherein it has been observed thus:

"The trial before the court of Sessions must proceed and be dealt with continuously from its inception to its finish. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. Sessions cases must not be tried piecemeal. Once the trial commences, he must except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded."

Considering the provision of Advocates Act, it was observed that Advocate accepting brief in criminal case must attend trial from day-to-day and failure in doing so will be committing breach of his professional duty.

31. For ensuring that the trial proceeds day-to-day and is concluded as quickly as possible, it is the duty of the Judicial Officers to monitor the trial. It is the duty of the counsel appearing for the defence as well as the prosecution to assist the system in achieving this goal. Likewise, it is the duty of the State to provide sufficient and adequate assistance for prosecution of the case and to see that witnesses and accused persons are kept present in the Court at the time of the trial without delay.

31. Reverting to the facts of the case, as we have discussed earlier, case of accused Nos.1 and 2 does not fall within the rarest of rare case and, therefore, we do not confirm the sentence of hanging. In our opinion, therefore, the sentence will have to be that of life imprisonment. In this regard, decision in the case of Shri Bhagwan v. State of Rajasthan, 2001 AIR SCW 2189, may be profitably referred to. In paragraph 23 of the said judgment, it has been observed thus:

"23. In Maru Ram v. Union of India (1981) 1 SCC 107: (AIR 1980 SC 2147 : 1980 Cri.LJ 1440), Constitutional Bench of this Court reiterated the aforesaid position and observed that inevitable conclusion is that since in Section 433-A we deal only with life sentences, remissions lead nowhere and cannot entitle a prisoner to release. Further, in Laxman Naskar (Life Convict) v. State of W.B., (2000) 7 SCC 626 : (200 AIR SCW 3060 : AIR 2000 SC 2762 : 2000 Cri. LJ 4017, after referring to the decision of the case of Gopal Vinayak Godse v. State of Maharashtra, (1961) 3 SCR 440 : (AIR 1961 SC 600 : (1961) 1 Cri LJ 736), the Court reiterated that sentence for "imprisonment for life" ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this section does not entitle the convict to be released automatically before the full life term is served. It was observed that though under the relevant Rules a sentence for imprisonment for life is equated with definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose."

Accused Nos. 1 and 2 are, therefore, directed to undergo life imprisonment. We do not change the penalty of fine imposed by the Trial Court on accuses Nos. 1 and 2, but additionally direct that the entire amount of fine, if deposited, shall be paid to the heirs of deceased Arvindbhai.

32. So far as accused No.3 is concerned, he stands acquitted. His bail bond shall stand cancelled. Fine, if paid by him, shall be refunded.

[B.C. PATEL, J.]

[A.L. DAVE, J.]

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